

STEPHANIE M. HINDS (CABN 154284)
United States Attorney

THOMAS A. COLTHURST (CABN 99493)
Chief, Criminal Division

MICHAEL G. PITMAN (DCBN 484164)
Assistant United States Attorney
150 Almaden Boulevard, Suite 900
San Jose, CA 95113
Telephone: (408) 535-5040
Facsimile: (408) 535-5081
Email: michael.pitman@usdoj.gov

COREY J. SMITH (MABN 553615)
Senior Litigation Counsel
United States Department of Justice
Telephone: (202) 514-5230
Email: corey.smith@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARLOS E. KEPKE,

Defendant.

Criminal No. 3:21-CR-00155-JD

PARTIES' FOURTH
STIPULATION FOR TRIAL
REGARDING AUTHENTICITY OF
EVIDENCE FROM SEARCH WARRANT

The United States of America and Defendant Carlos E. Kepke, by and through undersigned counsel, hereby stipulate for purposes of trial as follows:

1. The emails, documents, and correspondence seized from Defendant through the execution of search warrants on his email account, home/office, and storage facility, including the specifically listed Trial Exhibits identified in Table 1 below, are authenticate and satisfy the requirements of Fed. R. Evid. 901;

2. The parties reserve all rights to object to the admission of these documents on any grounds other than authenticity, including preserving any objection as to relevance; and

3. The photocopies of any Trial Exhibits addressed in this Stipulation may be presented as evidence pursuant to Federal Rules of Evidence 1003.

Table 1

Ex. No.	Date	Description	Beg. Bates	End Bates
44	11/13/2013	Email Kepke to Robert Smith	ISP-P-0000381	ISP-P-0000381
45	12/22/2014	Email Orion Trust to David Foster/Gregory Craig/Robert Smith	ISP-P-0001324	ISP-P-0001324
46	12/23/2014	Email Orion Corporate to Robert Smith	ISP-P-0001581	ISP-P-0001581
47	12/8/2010	Email Kepke to Warnken Brill	ISP-P-0001758	ISP-P-0001758
48	10/27/2011	Email Warnken Brill to Kepke	ISP-P-0001788	ISP-P-0001788
49	10/20/2011	Letter from Carlos Kepke	ISP-P-0001789	ISP-P-0001789
50	10/28/2011	Email Kepke to Warnken Brill	ISP-P-0001803	ISP-P-0001803
51	10/28/2011	Letter from Carlos Kepke	ISP-P-0001804	ISP-P-0001804
53	1/13/2010	Email Kepke to Robert Smith	ISP-W-0000151	ISP-W-0000151
54	9/12/2007	Email Kepke to Robert Smith	ISP-W-0000161	ISP-W-0000161
55	3/4/2010	Email Kepke to Robert Smith	ISP-W-0000178	ISP-W-0000178
56	8/23/2008	Email Kepke to Robert Smith	ISP-W-0000262	ISP-W-0000263
73	12/8/1999	Fax Letter from Carlos Kepke to Glenn Godfrey dated Dec 8, 1999	CTRL000096780	CTRL000096782
74	12/9/1999	Fax Cover Sheet, Excelsior Trust, Request to Smith for name & address of settlor	SMITH-077306	SMITH-077307
75	1/4/2000	Excelsior Trust Fax Cover Letter and Draft of Excelsior Trust Indenture	SMITH-077252	SMITH-077274
76	1/5/2000	Fax Cover Sheet, Excelsior Trust, Request to Smith for Name & Address of Settlor	SMITH-004047	SMITH-004047
77	3/6/2000	Fax Cover Sheet, Concern over Conflict of interest on Smith as an official Client	SMITH-067892	SMITH-067892
78	3/10/2000	Fax dtd March 10, 2000 from Glenn Godfrey to Carlos Kepke	SMITH-067887	SMITH-067887
80	3/29/2000	Signed Excelsior Trust Indenture	SMITH-003858	SMITH-003879
81	9/11/2007	Email, Headley Waddington & Need for Bearer Share Certificate	CTRL000096760	CTRL000096760
82	4/4/2000	Letter/Invoice for \$1,250 Corporate Maintenance Fees for Flash Holdings	SMITH-004024	SMITH-004024
85		Certification of Excelsior Trust by Carlos Kepke	SMITH-004922	SMITH-004922
86	3/9/2000	Flash Holdings Articles of Organization (Incorporation)	SMITH-001820	SMITH-001820
87		Certification of Flash Holdings	SMITH-001822	SMITH-001829
88		Flash Holdings Shares	SMITH-001832	SMITH-001832
89	2/1/2011	CK Invoice re Work with Robyn Neal	CTRL000096765	CTRL000096765
90	3/20/2001	Ltr Invoice Notification for Flash Holdings LLC	SMITH-002082	SMITH-002082
91	5/1/2001	CK Invoice notice for Nevis Trust	SMITH-002071	SMITH-002071

92	7/30/2001	Fax from Carlos Kepke to Robert Smith re Excelsior Trust	SMITH-001927	SMITH-001927
93	11/1/2002	CK Invoice notice for Flash Holding LLC	SMITH-002055	SMITH-002055
94	1/1/2005	CK Invoice notice for Flash Holding LLC	SMITH-001894	SMITH-001894
95	4/24/2007	Letter from Carlos Kepke to Robert Smith Transmitting Trust Documents	SMITH-001752	SMITH-001752
96	4/27/2007	Ltr reference Flash Late Payment Penalty Fees & Sending Check Payable to Kepke	SMITH-001774	SMITH-001774
97	2/1/2008	CK Law Office Balance Statement, Trusteeship of Excelsior	CTRL000096806	CTRL000096806
98	7/15/2013	Email, CK to RS about problem w/Flash Holding investing in Vista Foundation	CTRL000096846	CTRL000096846
99	1/1/2012	CK Law Office Balance Statement, Service for December 2011	SMITH-081098	SMITH-081098
100	1/5/2015	Email, Reference 1/1/2015 Invoice	ISP-P-0001080	ISP-P-0001080
100	1/5/2015	Email, Reference 1/1/2015 Invoice	ISP-P-0001080	ISP-P-0001080
101	1/20/2003	Ltr, Flash Holding, IRS treatment of bearer certificate U.S. ownership	SMITH-002049	SMITH-002049
102	5/16/2003	Fax Cover, Note Ref. request for Flash Holding ownership documentation evidence	SMITH-001919	SMITH-001919
103	12/2/2004	Ltr reference Repatriation of Foreign Profits/Dividends	SMITH-001896	SMITH-001897
104	12/5/2005	Ltr, Offer of Lower Corporate Maintenance Fees	SMITH-001874	SMITH-001874
105	7/16/2008	Email from Carlos Kepke to Robert Smith re Cititrust contact	SMITH-002183	SMITH-002183
107	10/20/2009	Fax Cover Sheet, Note on U.S. Citizen Donate Assets to Foreign Trust deemed Grantor/Settlor	SMITH-002558	SMITH-002560
110	12/10/2009	Letter from Carlos Kepke to Robert Smith Trustee Fees	SMITH-002800	SMITH-002800
111	10/23/2010	Email, Trustee Purchasing Share Capital of Flash Property Holding,	SMITH-003245	SMITH-003245
112	10/24/2010	IRS and Foreign Trust Owner Explanation Letter	ISP-W-0000200	ISP-W-0000207
113	10/24/2010	Email, Request for Org chart of all Foreign Trusts to Review	ISP-W-0000018	ISP-W-0000018
114	10/24/2010	Email on attached letter about foreign corporations and foreign trusts	ISP-W-0000199	ISP-W-0000199
115	10/29/2010	Email from Carlos Kepke to Robert Smith re Robyn Neal	SMITH-003242	SMITH-003242
116	10/29/2010	Email from Carlos Kepke to Robert Smith re Nevis LLCs	SMITH-003241	SMITH-003241
117	11/1/2010	Email from Robert Smith to Carlos Kepke re Robyn Neal	SMITH-003234	SMITH-003234
118	2/10/2011	Email, Excelsior Trust/Hire Act Tax Legislation	SMITH-003602	SMITH-003602
119	10/30/2013	Email, Regarding Flash Property Mgmt. LLC/Bank Account and applicable laws	ISP-W-0000051	ISP-W-0000051

120	5/3/2012	Email from Robert Smith to Carlos Kepke re financial interest in Bank Account	ISP-P-0001522	ISP-P-0001522
121	5/5/2012	Email from Carlos Kepke to Robert Smith re filing W-9 Forms	ISP-P-0000051	ISP-P-0000051
122	5/5/2012	Email, Compliance Status of Flash Holding LLC	ISP-P-0001160	ISP-P-0001160
123	5/9/2012	Email from Robert Smith to Carlos Kepke directing non-filing of Forms W-9	SMITH-004917	SMITH-004917
125	9/22/2008	Email, CK to RS, Advising J. Godfrey/Cititrust not to contact Smith directly but contact Kepke	SMITH-002310	SMITH-002310
127	10/19/2009	Letter, RS advising Flash Holding consisting solely of holding investment assets	SMITH-002566	SMITH-002566
128	7/7/2000	Fax dtd July 7, 2000 from Carlos Kepke to Robert Smith	SMITH-004021	SMITH-004021
130	9/6/2007	Email, CK to G. Godfrey, Beneficial Owner reluctance to give requested authorization	SMITH-002417	SMITH-002417
131	9/12/2007	Email, CK to RS, Abt sending communication as Trust Protector not manifesting control	SMITH-002404	SMITH-002404
132	4/3/2000	Fax Cover Sheet, Request \$30K Invoice & \$7.5K Initial Funding of Trust	SMITH-004036	SMITH-004036
133	9/22/2008	Email, J. Godfrey writing Smith to find out if there another contact on trust matters	SMITH-002311	SMITH-002311
134	10/28/2008	Email, CK suggests Smith make payments and handle all trust correspondence through him	SMITH-002194	SMITH-002194
135	3/20/2009	Fax from CK to Robert Smith re "Cleanse" files	SMITH-052834	SMITH-052837
136	11/22/2010	Email from Carlos Kepke to Robert Smith re "securitize" files	ISP-W-0000614	ISP-W-0000614
137	1/11/2008	Email, RS to CK, Not making changes to Excelsior Trust until 2008	SMITH-002367	SMITH-002367
139	1/13/2014	Email, Orion's response to RS for an accounting of Excelsior Trust assets	SMITH-006152	(CK-BB11_003419)
140	5/30/2012	Email, Sale of The Robert Smith Family Limited Partnership to Flash Holdings LLC	ISP-P-0001386	ISP-P-0001389
141	6/23/2012	Letter, RS/Flash Holding recommendation that company enter promissory note w/RS	ISP-W-0000188	ISP-W-0000188
142	10/30/2010	Email, Response incorrect as Belize came off the OECD blacklist and onto whitelist	SMITH-003238	SMITH-003238
145	12/17/2013	Email with Frutiger re Fario dated 12/13/2013	ISP-P-0000322	ISP-P-0000323

146	2/1/2014	Email RS to CK to pay registration fees for Fario dated 2/1/2014	ISP-W-0000429	ISP-W-0000429
147	10/29/2013	Email RS to CK re transfer of assets from FH to Fario dated 10/29/2013	ISP-W-0000589	ISP-W-0000589
156	8/24/2007	Email, CK to J. Turnbull, Smith reluctance to reply to email abt control of company	YAHOO-0000777	YAHOO-0000777
157	11/11/2008	Fax from Carlos Kepke to Robert Smith re Flash Holding and assets	CTRL000096843	CTRL000096843
343	11/4/2009	Email from Carlos Kepke to Robert Smith re Belize Trustee	Smith-051323	Smith-051324
344	12/2/2010	Dubinsky Report, Figure 69, Email from Carlos Kepke to John Warnken-Brill dated December 2, 2010	PRIV_THIRD-001335	PRIV-THIRD-001338
345	12/21/2010	Dubinsky Report, Figure 70, Email from Carlos Kepke to John Warnken Brill and Robert Smith dated December 21, 2010	PRIV-THIRD-000054	PRIV-THIRD-000054
346	3/3/2011	Dubinsky Report, Figure 71, Email from Carlos Kepke to John Warnken-Brill and Robert Smith dated March 3, 2011	PRIV-THIRD-000258	PRIV-THIRD-000258

Seen and Agreed:

Date: November 25, 2022

STEPHANIE M. HINDS

United States Attorney

/s/ Corey J. Smith

COREY J. SMITH

Senior Litigation Counsel

MICHAEL G. PITMAN

Assistant United States Attorney

Attorneys for United States of America

/s/ Grant P. Fondo

GRANT P. FONDO (SBN 181530)

GFondo@goodwinlaw.com

RICHARD M. STRASSBERG (*pro hac vice*)

RStrassberg@goodwinlaw.com

DAVID R. CALLAWAY (SBN 121782)

DCallaway@goodwinlaw.com

SYLVIA R. EWALD (SBN 300267)

SEwald@goodwinlaw.com

GOODWIN PROCTER LLP

Attorneys for Defendant Carlos E. Kepke